

**Before the  
Federal Communications Commission  
Washington, D.C.**

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U.S. DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

In the Matter of )

1998 Biennial Regulatory Review -- )  
Reform of the International Settlements )  
Policy and Associated Filing Requirements )

IB Docket No. 98-148

Regulation of International )  
Accounting Rates )

CC Docket No. 90-337

**COMMENTS OF  
TELIA NORTH AMERICA, INC.**

Telia North America, Inc. ("Telia NA") by its attorneys, files these comments in response to the Commission's *Notice of Proposed Rulemaking* ("Notice") concerning the reform of the International Settlements Policy ("ISP").<sup>1</sup>

**INTRODUCTION**

Telia NA is authorized by the Commission to provide facilities-based and resold international telecommunications services on a global basis. The company presently offers Internet and telephony transit services to other carriers, but has plans to offer a wider range of services in the future. Telia NA is a wholly-owned subsidiary of Telia AB, a major provider of telecommunications services in Sweden.<sup>2</sup>

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<sup>1</sup> See *1998 Biennial Regulatory Review – Reform of the International Settlements Policy and Associated Filing Requirements, Regulation of International Accounting Rates*, FCC 98-190, IB Docket No. 98-148, CC Docket No. 90-337 (rel. Aug. 6, 1998) ("Notice").

<sup>2</sup> Telia NA also is under common control and thus affiliated with carriers in the United Kingdom, Denmark, Norway, Finland, Latvia, Lithuania, and Sri Lanka.

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As the Commission has previously determined, Sweden offers effective competitive opportunities to foreign carriers, including those from the United States.<sup>3</sup> Notably, the opening of Sweden's telecommunications market to competition preceded the January 1, 1998 effective date of the EU's Directive<sup>4</sup> mandating telecommunications liberalization and the February 15, 1998 effective date of the WTO Basic Telecom Agreement.<sup>5</sup> Due to Sweden's relatively early liberalization, the Telia Group is well acquainted with the demands and opportunities presented by a competitive telecommunications market.

As the FCC also has recognized, Sweden is one of only a handful of progressive countries to explore accounting rate reform.<sup>6</sup> Like the United States, Sweden has high volumes of outgoing traffic and a net settlements deficit. Unlike the United States, however, Sweden, has no regulatory equivalent to the Commission's ISP. This situation has created opportunities for foreign carriers to completely bypass Telia AB's international facilities and services by establishing an affiliate in Sweden, directing international traffic to the affiliate, and then using the affiliate to terminate international traffic in the PSTN in Sweden at a low national interconnection rate, rather than a settlement rate. With such an open and competitive telecommunications market, it is not surprising that Swedish carriers have long-offered U.S. carriers some of the lowest settlement rates in the world. For example, Telia AB currently offers U.S. carriers a settlement rate of \$0.06, which is well below the FCC's benchmark rate of \$0.15.<sup>7</sup>

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<sup>3</sup> See *Telia North America*, DA 97-511, I-T-C No. 96-545 (rel. Mar. 11, 1997).

<sup>4</sup> See Directive 97/51/EC of the European Parliament and of the Council of 6 October 1997 amending Council Directive 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications, OJ L295, 29.10.1997.

<sup>5</sup> See Notice n. 22.

<sup>6</sup> See *International Settlement Rates*, Notice of Proposed Rulemaking, IB Docket No. 96-261, FCC 96-484, ¶ 16 (rel. Dec. 19, 1996).

<sup>7</sup> See *International Settlement Rates*, 12 FCC Rcd 19806 (1997).

## **I. The Commission Is to Be Congratulated For Proposing to Modify the ISP**

As a long standing advocate of accounting rate reform, Telia is pleased that the Commission has instituted this proceeding and proposed to modify the ISP.<sup>8</sup> When it first adopted this policy, the Commission observed that “changes in the structure of the international voice market may justify corresponding changes in our [I]SP application. As competition develops, . . . it may be desirable to relax our application of the policy.”<sup>9</sup> Since the adoption of the ISP, the structure of the international telecommunications market has changed dramatically.

As recognized in the *Notice*, the entry into force of the commitments made pursuant to the WTO Basic Telecom Agreement “has accelerated the trend toward privatization and liberalization of telecommunications markets.”<sup>10</sup> This, in turn, has led to a proliferation of international carriers. For example, in just the first 90 days after the Commission adopted a presumption in favor of entry by carriers from WTO countries, the agency issued over 200 new Section 214 authorizations.<sup>11</sup> Based on the Telia Group’s experience, new competitors are entering the telecommunications market on a similar scale in Europe and elsewhere. This trend

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<sup>8</sup> Before the Commission, Telia has consistently advocated the need for settlements reform and called on the agency to “join it in seeking to address the reduction of international accounting rates.” *Reply Comments of Swedish Televerket (Swedish Telecom Group)*, CC Docket No. 90-337, at 1-3 (filed Nov. 13, 1990); see *Comments of Telia AB*, IB Docket No. 96-261 (filed Feb. 7, 1997); *Comments of Televerket*, CC Docket No. 90-337, at 2 (filed March 23, 1992).

Telia also has advocated for accounting rate reform in international fora. See, e.g., Dr. Tony Hagström, Director General, Televerket, “*Integration of Technology and Telecommunications Policy*,” ITU Forum, Geneva (Oct. 22, 1987); Televerket, “*Remuneration and Accounting Rates Between Operators for the International Service*,” International Telegraph and Telephone Consultative Committee, Study Group III (1990-92).

<sup>9</sup> *Implementation and Scope of the Uniform Settlements Policy for Parallel International Communications Routes*, CC Docket No. 85-204, RM 4796, at ¶ 35 n.65 (rel. Jan. 30, 1986).

<sup>10</sup> See *Notice* ¶ 15.

<sup>11</sup> See FCC Public Notice (rel. May 2, 1998).

towards liberalization and widespread market entry, the FCC has recognized, has contributed to a rapid decline in international accounting rates.<sup>12</sup>

Consistent with these significant changes in the structure and economics of the international telecommunications market, the Commission should make corresponding changes in its policies. The United States has historically tried to foster competition in the global telecommunications market. Towards this end, the United States, in bilateral and multilateral negotiations, has repeatedly urged foreign governments to adopt open their markets to U.S. carriers. Now that full facilities-based competition has taken root in many foreign markets,<sup>13</sup> it is appropriate for the Commission to adopt such policies and to eliminate unnecessary regulations – such as the ISP – wherever feasible. Put another way, the Commission should have confidence in the market forces that the United States, through its leadership in the WTO, has set in motion and in the regulatory policies that it has championed. To the extent that the Commission determines that some degree of oversight of the international settlements process is still necessary, any vestiges of the ISP retained by the agency should be competitively fair, address only appropriate regulatory goals, use regulatory tools that are proportional to such goals, and not unnecessarily shield U.S. carriers from competition.

## **II. The Commission Should Eliminate the ISP to the Greatest Extent Possible**

In light of the significant changes in the international telecommunications market described in the *Notice*, the Commission's decision to revisit the regulations that govern the

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<sup>12</sup> See FCC Public Notice, *One Year Anniversary of Benchmark Order Marked By Rapid Decline in Accounting Rates*, Report No. 98-45 (explaining that “the emergence of liberalization and privatization in many other countries has put further pressure on above-cost accounting rates by increasing the number of carriers that can terminate international services.”).

<sup>13</sup> The Commission has recognized repeatedly that “full facilities-based competition on the foreign end of a U.S. international route is ultimately the most potent safeguard against against anticompetitive” conduct. See, e.g., *Market Entry and Regulation of Foreign-affiliated Entities*, 11 FCC Rcd 3873, 3880 (1995).

provision of international services by U.S. carriers is welcome. While it would be preferable to eliminate the ISP altogether, the alternatives proposed in the *Notice* are promising.

First, the Commission has proposed to eliminate the ISP for arrangements with carriers from liberalized WTO markets with low settlement rates.<sup>14</sup> As recognized in the *Notice*, such markets will provide U.S. carriers with “alternatives to terminate international traffic,” either by corresponding with new entrants or by entering these markets themselves and providing end-to-end service through self-correspondence.<sup>15</sup> The existence of these alternatives will effectively eliminate the ability of carriers in these markets to leverage their control of facilities and services to “whipsaw” U.S. carriers. Moreover, the presence of low accounting rates in these markets will further reduce the likelihood that a foreign carrier could extract concessions from U.S. carriers. What is more likely, is that U.S. and foreign carriers will take advantage of the opportunities presented by the elimination of the ISP to enter into innovative agreements that will benefit U.S. and foreign consumers.

Second, the Commission has proposed to eliminate the ISP for arrangements with foreign carriers in WTO Member Countries that do not have market power.<sup>16</sup> Telia supports the Commission’s tentative conclusion. As explained in the *Notice*, any attempt at “whipsawing” by a carrier without market would promptly “be countered by a defection by U.S. carriers to another operator.”<sup>17</sup> The Commission should therefore permit U.S. carriers to negotiate freely with foreign carriers that lack market power.

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<sup>14</sup> See *Notice* ¶¶ 25-31.

<sup>15</sup> *Id.* at ¶ 26.

<sup>16</sup> See *id.* at ¶¶ 18-24.

<sup>17</sup> *Id.* at ¶ 20.

### **III. All Carriers, Including Those With Foreign Affiliates, Should be Allowed to Take Advantage of the New ISP Rules**

The Commission should apply any modified ISP rules adopted in this proceeding to all carriers on an equal basis. In particular, the Commission should not distinguish between U.S. carriers that have foreign affiliates and those that do not with respect to the application of the policy. As recognized by the Commission, the entry of foreign carriers into the U.S. market has stimulated competition, provided customers with expanded service offerings, increased the quality of service, and placed much-needed downward pressure on rates.<sup>18</sup> For foreign-affiliated carriers to compete effectively, they must have the same opportunities that are available to U.S.-owned carriers, including those involved in international joint ventures. To deny foreign-affiliated carriers the opportunity to enter into innovative settlement arrangements would place them at a significant competitive disadvantage and undermine the multilateral approach adopted by the United States through the WTO Basic Telecom Agreement.

### **IV. The No Special Concessions Rule Should Be Reevaluated**

In the *Notice*, the Commission also has asked for comment on the relationship between the ISP and No Special Concession Rules.<sup>19</sup> At a minimum, any relaxation of the ISP should carry with it an exemption from the No Special Concession Rules, *i.e.*, carriers should be free to negotiate different accounting rates, deviate from proportionate return, and enter into asymmetric accounting rate agreements.

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<sup>18</sup> See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Market Entry and Regulation of Foreign-affiliated Entities*, FCC 97-398, IB Docket No. 97-142, IB Docket No. 95-22, at ¶ 4 (rel. Nov. 26, 1997).

<sup>19</sup> See *id.* at ¶ 39.

**V. In an Appropriate Proceeding, the Commission Should Revisit its Classification Scheme for International Carriers**

Telia NA is a “start-up” international carrier and the entire Telia Group, which has annual revenues of \$6.1 billion, is small in comparison with its major competitors in world telecommunication markets.<sup>20</sup> Despite being among the smallest international companies in the U.S. market, Telia NA is classified as dominant by the FCC and subject to a range of special regulatory requirements. At the same time, no U.S.-owned “wireline” carrier, no matter how large, is similarly classified on any international route. While the Commission has not requested comment on its classification scheme for international carriers in this proceeding, Telia NA believes that the Commission should revisit this issue at an early date.

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<sup>20</sup> For example, the following are the 1997 annual revenues (in millions) for:

AT&T Corp.	\$50,892.0	British Telecommunications plc	\$26,145.4
Deutsche Telekom AG	DM 70.51 billion	France Telecom	\$26,039.0
MCI Communications Corp.	\$19,653.0	Sprint Corporation	\$14,873.9
WorldCom, Inc.	\$7,351.4		

**CONCLUSION**

For the foregoing reasons, the Commission should remove the ISP altogether or, in the alternative, modify the policy by eliminating the ISP for arrangements (1) with non-dominant foreign carriers from WTO countries, or (2) with foreign carriers from WTO countries that offer U.S. carriers low settlement rates, such as countries on the foreign end of international routes where International Simple Resale ("ISR") is authorized. Finally, should the Commission modify the ISP rules, it should not distinguish between U.S.-owned carriers and foreign-affiliated carriers.

Respectfully submitted,

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